

ALTIRIS INC
Form DEF 14A
April 18, 2005
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934

(Amendment No. __)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- | | | | |
|-------------------------------------|---|--------------------------|--|
| <input type="checkbox"/> | Preliminary Proxy Statement | <input type="checkbox"/> | Confidential, for Use of the Commission Only
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| <input type="checkbox"/> | Definitive Additional Materials | | |
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ALTIRIS, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON MAY 10, 2005

To our Stockholders:

You are cordially invited to attend the 2005 Annual Meeting of Stockholders of Altiris, Inc. (the *Company*). The meeting will be held at our corporate headquarters located at 588 West 400 South, Lindon, Utah 84042 on Tuesday, May 10, 2005, for the following purposes:

1. To elect two Class III directors to serve for a three-year term that expires at the 2008 Annual Meeting of Stockholders and until their successors have been duly elected and qualified;
2. To ratify the appointment of KPMG LLP as our independent registered public accountants for the fiscal year ending December 31, 2005; and
3. To transact such other business as may properly come before the Annual Meeting, including any motion to adjourn to a later date to permit further solicitation of proxies, if necessary, or before any adjournment thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this Notice.

The meeting will begin promptly at 2:00 p.m., local time, and check-in will begin at 1:30 p.m., local time. Only holders of record of shares of Altiris common stock (NASDAQ:ATRS) at the close of business on Thursday, March 31, 2005 are entitled to notice of and to vote at the meeting and any postponements or adjournments of the meeting.

For a period of at least 10 days prior to the meeting, a complete list of stockholders entitled to vote at the meeting will be available and open to the examination of any stockholder for any purpose germane to the meeting during normal business hours at our corporate headquarters located at 588 West 400 South, Lindon, Utah.

By order of the Board of Directors,
Gregory S. Butterfield

Chief Executive Officer and Chairman

Lindon, Utah

April 18, 2005

YOUR VOTE IS IMPORTANT!

PLEASE SUBMIT YOUR PROXY AS PROMPTLY AS POSSIBLE BY FOLLOWING THE INSTRUCTIONS ON THE ENCLOSED PROXY CARD.

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ALTIRIS, INC.

PROXY STATEMENT

GENERAL INFORMATION

The Board of Directors of Altiris, Inc., a Delaware corporation, is soliciting the enclosed proxy from you. The proxy will be used at our 2005 Annual Meeting of Stockholders to be held on Tuesday, May 10, 2005, beginning at 2:00 p.m., at our executive offices located at 588 West 400 South, Lindon, Utah, and at any postponements or adjournments thereof. This proxy statement contains important information regarding the meeting. Specifically, it identifies the matters upon which you are being asked to vote, provides information that you may find useful in determining how to vote and describes the voting procedures.

We use several abbreviations in this proxy statement. We may refer to our company as *Altiris* or the *Company*. The term *proxy materials* includes this proxy statement, as well as the enclosed proxy card and our Annual Report on Form 10-K for the year ended December 31, 2004, filed with the U.S. Securities and Exchange Commission on March 16, 2005. The term *meeting* means our 2005 Annual Meeting of Stockholders.

We are sending these proxy materials on or about April 18, 2005, to all stockholders of record at the close of business on March 31, 2005 (the *Record Date*).

QUESTIONS AND ANSWERS CONCERNING THIS SOLICITATION

AND VOTING AT THE ANNUAL MEETING

- When and where is the meeting?** The meeting will be held on Tuesday, May 10, 2005, beginning at 2:00 p.m., at our executive offices located at 588 West 400 South, Lindon, Utah.
- Why I am receiving these proxy materials?** You are receiving these proxy materials from us because you were a stockholder of record at the close of business on the Record Date, March 31, 2005. As a stockholder of record, you are invited to attend the meeting and are entitled to and requested to vote on the items of business described in this proxy statement.
- What is the purpose of the annual meeting?** At our meeting, stockholders of record will act upon the items of business outlined in the notice of meeting (on the cover page of this proxy statement), each of which are described more fully in this proxy statement. In addition, management will report on the performance of the

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Company and respond to questions from stockholders.

Who is entitled to attend the meeting?

Only stockholders of record as of the close of business on Thursday, March 31, 2005 are entitled to receive notice of and to participate in the meeting. You should be prepared to present photo identification for admittance.

Please also note that if you are not a stockholder of record but hold shares in *street name* (that is, through a broker or nominee), you will need to provide proof of beneficial ownership as of the Record Date,

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such as your most recent brokerage account statement prior to Thursday, March 31, 2005, a copy of the voting instruction card provided by your broker, trustee or nominee, or other similar evidence of ownership. If you do not provide photo identification or comply with the other procedures outlined above upon request, you will not be admitted to the annual meeting.

The meeting will begin promptly at 2:00 p.m., local time. Check-in will begin at 1:30 p.m., local time.

Who is entitled to vote at the meeting? Only stockholders who owned Altiris common stock (NASDAQ: ATRS) at the close of business on the Record Date are entitled to notice of and to vote at the meeting, and at any postponements or adjournments thereof.

As of the Record Date, 27,391,134 shares of Altiris common stock were outstanding. Each outstanding share of Altiris common stock entitles the holder to one vote on each matter considered at the meeting. Accordingly, there are a maximum of 27,391,134 votes that may be cast at the meeting.

How many shares must be present or represented to conduct business at the meeting (that is, what constitutes a quorum)? The presence at the meeting, in person or by proxy, of the holders of a majority of the shares of Altiris common stock entitled to vote at the meeting will constitute a quorum. A quorum is required to conduct business at the meeting. The presence of the holders of Altiris common stock representing at least 13,695,568 votes will be required to establish a quorum at the meeting. Both abstentions and broker non-votes are counted for the purpose of determining the presence of a quorum.

What items of business will be voted on at the meeting? The items of business scheduled to be voted on at the meeting are as follows:

1. To elect two nominees to serve as Class III directors on our Board of Directors; and
2. To ratify the appointment of KPMG LLP as our independent registered public accountants for the fiscal year ending December 31, 2005.

These proposals are described more fully below in these proxy materials. As of the date of this proxy statement, the only business that our Board of Directors intends to present or knows of that others will present at the meeting is as set forth in this proxy statement. If any other matter or matters are properly brought before the meeting, it is the intention of the persons who hold proxies to vote the shares they represent in accordance with their best judgment.

How does the Board of Directors recommend that I vote? Our Board of Directors recommends that you vote your shares **FOR** each of the director nominees and **FOR** the ratification of KPMG LLP as our independent registered public accountants for the 2005 fiscal year.

What shares can I vote at the meeting? You may vote all shares owned by you as of the Record Date, including (1) shares held directly in your name as the *stockholder of record*, and (2) shares held for you as the *beneficial owner* through a broker, trustee or other nominee such as a bank.

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What is the difference between holding shares as a stockholder of record and as a beneficial owner? Most Altiris stockholders hold their shares through a broker or other nominee rather than directly in their own name. As summarized below, there are some distinctions between shares held of record and those owned beneficially.

Stockholders of Record. If your shares are registered directly in your name with our transfer agent, EquiServe Trust Company, N.A., you are considered, with respect to those shares, the *stockholder of record*, and these proxy materials are being sent directly to you by us. As the *stockholder of record*, you have the right to grant your voting proxy directly to Altiris or to vote in person at the meeting. We have enclosed or sent a proxy card for you to use.

Beneficial Owner. If your shares are held in a brokerage account or by another nominee, you are considered the *beneficial owner* of shares held *in street name*, and these proxy materials are being forwarded to you by your broker, trustee or nominee, together with a voting instruction card. As the beneficial owner, you have the right to direct your broker, trustee or nominee how to vote and are also invited to attend the annual meeting. Please note that since a beneficial owner is not the *stockholder of record*, you may not vote these shares in person at the meeting unless you obtain a legal proxy from the broker, trustee or nominee that holds your shares, giving you the right to vote the shares at the meeting. Your broker, trustee or nominee has enclosed or provided voting instructions for you to use in directing the broker, trustee or nominee how to vote your shares.

How can I vote my shares without attending the meeting? Whether you hold shares directly as the stockholder of record or beneficially in street name, you may direct how your shares are voted without attending the meeting. If you are a stockholder of record, you may vote by submitting a proxy. If you hold shares beneficially in street name, you may vote by submitting voting instructions to your broker, trustee or nominee. For directions on how to vote, please refer to the instructions below and those included on your proxy card or, for shares held beneficially in street name, the voting instruction card provided by your broker, trustee or nominee.

By Internet Stockholders of record of Altiris common stock with Internet access may submit proxies from any location in the world by following the *Vote by Internet* instructions on their proxy cards. Most Altiris stockholders who hold shares beneficially in street name may vote by accessing the website specified on the voting instruction cards provided by their brokers, trustees or nominees. Please check the voting instruction card for Internet voting availability.

By Telephone Stockholders of record of Altiris common stock who live in the United States or Canada may submit proxies by following the *Vote by Phone* instructions on their proxy cards. Most Altiris stockholders who hold shares beneficially in street

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name and live in the United States or Canada may vote by phone by calling the number specified on the voting instruction cards provided by their brokers, trustees or nominees. Please check the voting instruction card for telephone voting availability.

By Mail Stockholders of record of Altiris common stock may submit proxies by completing, signing and dating their proxy cards and mailing them in the accompanying pre-addressed envelope. Altiris stockholders who hold shares beneficially in street name may vote by mail by completing, signing and dating the voting instruction cards provided and mailing them in the accompanying pre-addressed envelope.

How can I vote my shares in person at the meeting?

Shares held in your name as the stockholder of record may be voted in person at the meeting. Shares held beneficially in street name may be voted in person only if you obtain a legal proxy from the broker, trustee or nominee that holds your shares giving you the right to vote the shares. **Even if you plan to attend the meeting, we recommend that you also submit your proxy or voting instructions as described below so that your vote will be counted if you later decide not to attend the meeting.**

Can I change my vote?

You may change your vote at any time prior to the vote at the meeting. If you are the stockholder of record, you may change your vote by granting a new proxy bearing a later date (which automatically revokes the earlier proxy), by providing a written notice of revocation to our Corporate Secretary prior to your shares being voted, or by attending the meeting and voting in person. Attendance at the meeting will not cause your previously granted proxy to be revoked unless you specifically so request.

For shares you hold beneficially in street name, you may change your vote by submitting new voting instructions to your broker, trustee or nominee, or, if you have obtained a legal proxy from your broker, trustee or nominee giving you the right to vote your shares, by attending the meeting and voting in person.

Who can help answer my questions?

If you have any questions about the meeting or how to vote or revoke your proxy, please contact:

The Altman Group Inc.

800-217-0538

If you need additional copies of this proxy statement or voting materials, please contact the Altman Group (Altman) as described above or send an e-mail to info@altmangroup.com.

Is my vote confidential?

Proxy instructions, ballots and voting tabulations that identify individual stockholders are handled in a manner that protects your voting privacy. Your vote will not be disclosed either within Altiris or to third parties, except: (1) as necessary to meet applicable legal requirements, (2) to allow for the tabulation of votes and certification

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of the vote, and (3) to facilitate a successful proxy solicitation. Occasionally, stockholders provide written comments on their proxy card, which are then forwarded to Altiris management.

What vote is required to approve each item and how are votes counted? The vote required to approve each item of business and the method for counting votes is set forth below:

Election of Directors. The two director nominees receiving the highest number of affirmative FOR votes at the meeting (a plurality of votes cast) will be elected to serve as Class III directors. You may vote either FOR or WITHHOLD your vote for the director nominees. A properly executed proxy marked WITHHOLD with respect to the election of one or more directors will not be voted with respect to the director or directors indicated, although it will be counted for purposes of determining whether there is a quorum.

All Other Items. For each of the other items of business, the affirmative FOR vote of a majority of the shares represented in person or by proxy and entitled to vote on the item will be required for approval. You may vote FOR, AGAINST or ABSTAIN for these items of business. If you ABSTAIN, your abstention has the same effect as a vote AGAINST.

If you provide specific instructions with regard to certain items, your shares will be voted as you instruct on such items. If you sign your proxy card or voting instruction card without giving specific instructions, your shares will be voted in accordance with the recommendations of our Board of Directors (i.e., FOR all of the Company's director nominees, FOR ratification of the independent auditors, and in the discretion of the proxy holders on any other matters that properly come before the meeting).

What is a broker non-vote ?

Under the rules that govern brokers who have record ownership of shares that are held in street name for their clients, who are the beneficial owners of the shares, brokers have the discretion to vote such shares on *routine matters* (such as election of directors and ratification of the appointment of independent accountants), but not on *non-routine matters*. Thus, if you do not otherwise instruct your broker, the broker may turn in a proxy card voting your shares FOR or AGAINST routine matters but will *not* vote on non-routine matters. A *broker non-vote* occurs when a broker expressly instructs on a proxy card that it is not voting on a matter, whether routine or non-routine.

How are broker non-votes counted?

Broker non-votes will be counted for the purpose of determining the presence or absence of a quorum for the transaction of business, but they will not be counted in tabulating the voting result for any particular proposal.

How are abstentions counted?

If you return a proxy card that indicates an abstention from voting in all matters, the shares represented will be counted for the purpose of

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determining both the presence of a quorum and the total number of votes cast with respect to a proposal (other than the election of directors), but they will not be voted on any matter at the 2005 Annual Meeting. In the absence of controlling precedent to the contrary, we intend to treat abstentions in this manner. Accordingly, abstentions will have the same effect as a vote *AGAINST* a proposal.

What happens if additional matters are presented at the meeting?

Other than the two items of business described in this proxy statement, we are not aware of any other business to be acted upon at the annual meeting. If you grant a proxy, the persons named as proxy holders, Stephen C. Erickson (our Chief Financial Officer) and Craig H. Christensen (our Corporate Secretary), will have the discretion to vote your shares on any additional matters properly presented for a vote at the meeting. If, for any unforeseen reason, any of our nominees is not available as a candidate for director, the persons named as proxy holders will vote your proxy for such other candidate or candidates as may be nominated by our Board of Directors.

Who will serve as inspector of election?

We expect a representative of EquiServe Trust Company, N.A., our Transfer Agent, to tabulate the votes and act as inspector of election at the annual meeting.

What should I do in the event that I receive more than one set of proxy/voting materials?

You may receive more than one set of these proxy materials, including multiple copies of this proxy statement and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you may receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a stockholder of record and your shares are registered in more than one name, you will receive more than one proxy card. Please complete, sign, date and return each Altiris proxy card and voting instruction card that you receive to ensure that all your shares are voted.

Who is soliciting my vote and who will bear the costs of this solicitation?

Altiris is making this solicitation and will pay the entire cost of preparing, assembling, printing, mailing and distributing these proxy materials and soliciting votes. If you choose to access these proxy materials or vote over the Internet, you are responsible for Internet charges you may incur. If you choose to vote by telephone, you are responsible for telephone charges you may incur. In addition to this solicitation by mail, the solicitation of proxies or votes may be made in person, by telephone or by electronic communication by members of our Board of Directors, our officers and other employees, who will not receive any additional compensation for assisting in the solicitation. We have also engaged Altman to assist us in the distribution of proxy materials and the solicitation of votes described above. We will pay Altman a fee of approximately \$3,500, plus customary costs and expenses for these services. Upon request, we will also reimburse brokerage houses and other custodians, nominees, and fiduciaries for forwarding proxy solicitation materials to the beneficial owners of Altiris common stock.

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Where can I find the voting results of the meeting?	We intend to announce preliminary voting results at the annual meeting and publish final results in our quarterly report on Form 10-Q for the second quarter of fiscal 2005.
What is the deadline to propose actions for consideration at next year's annual meeting of stockholders or to nominate individuals to serve as directors?	As a stockholder, you may be entitled to present proposals for action at a future meeting of stockholders, including director nominations. <i>Stockholder Proposals:</i> For a stockholder proposal to be considered for inclusion in the Altiris proxy statement for the annual meeting to be held in 2006, the written proposal must be received by the Corporate Secretary of Altiris at our principal executive offices no later than December 19, 2005. If the date of next year's annual meeting is moved more than 30 days before or after the anniversary date of this year's annual meeting, the deadline for inclusion of proposals in the Altiris proxy statement is instead a reasonable time before Altiris begins to print and mail its proxy materials. Such proposals also must comply with the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended, and any other applicable rules established by the U.S. Securities and Exchange Commission. Proposals should be addressed to:

Altiris, Inc.

588 West 400 South

Lindon, Utah 84042

Attention: Corporate Secretary.

For a stockholder proposal that is not intended to be included in the Altiris proxy statement in accordance with Rule 14a-8, the stockholder must provide the information required by the Bylaws of Altiris and give timely notice to the Corporate Secretary of Altiris in accordance with the Bylaws of Altiris, which, in general, require that the notice be received by the Corporate Secretary of Altiris:

Not later than the close of business on February 17, 2006.

If the date of the next annual meeting of stockholders (to be held in 2006) is moved more than 30 days before or after the anniversary of this annual meeting, then notice of a stockholder proposal that is not intended to be included in the Altiris proxy statement under Rule 14a-8 for such future meeting must be received no later than the close of business on the earlier of the following two dates:

10 days after notice of the date of the meeting is mailed; or

10 days after Altiris publicly announces the meeting date.

Nomination of Director Candidates: Stockholders may recommend director candidates for consideration by our Board's Governance and Nominating Committee. Any such recommendations should include the nominee's name, home and business address and other contact information, detailed biographical data, and qualifications for board membership, along with information regarding any relationships between the candidate and Altiris within the last three fiscal years. Such recommendations should be directed to our Corporate Secretary

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at the address of our principal executive offices set forth above. In addition, our Bylaws permit stockholders to nominate directors for election at an annual meeting of stockholders. To nominate a director, the stockholder must provide the information required by our Bylaws, as well as a statement by the candidate consenting to being named as a nominee and serving as a director if elected. In addition, the stockholder must give timely notice to our Corporate Secretary in accordance with the provisions of our Bylaws, which, in general, require that the notice be received by the Corporate Secretary of Altiris within the time period described above under Stockholder Proposals.

Copy of Bylaw Provisions: You may contact our Corporate Secretary at our principal executive offices for a copy of the relevant bylaw provisions regarding the requirements for making stockholder proposals and nominating director candidates. The Bylaws of Altiris also are available on the Investor Relations section of our website at <http://www.altiris.com>.

How may I communicate with the Board of Directors of Altiris or the non-management directors on the Altiris Board?

To contact the Board of Directors, please send a letter or email using the contact information provided below. Communications may be addressed to the entire Board, to the non-management directors as a group, or to any individual director. All such communications will be initially received and processed by the office of our General Counsel, and our Lead Independent Director (currently Michael J. Levinthal) will be automatically copied on all communications. Accounting, audit, internal accounting controls and other financial matters will be referred to our Audit Committee chairperson. Other matters will be referred to the Board of Directors, the non-management directors, or individual directors as appropriate.

Write to the Board at:

Altiris, Inc.
c/o Craig H. Christensen, Corporate Secretary
588 West 400 South
Lindon, Utah 84042

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The following table provides information relating to the beneficial ownership of Altiris Common Stock as of the Record Date, by:

each person (or group of affiliated persons) known by us to own beneficially more than 5% of Altiris Common Stock;

each of our Named Executive Officers;

each of our directors and director nominees; and

all of our directors and executive officers as a group.

The number of shares beneficially owned by each entity, person, director or executive officer is determined in accordance with the rules of the U.S. Securities and Exchange Commission (the *SEC*), and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rules, beneficial ownership includes any shares over which the individual has the sole or shared voting power or investment power and any shares that the individual has the right to acquire within 60 days of the Record Date (March 31, 2005) through the exercise of any stock option or other right. Unless otherwise indicated, each person has sole voting and investment power (or shares such powers with his or her spouse) with respect to the shares set forth in the following table.

The number and percentage of shares beneficially owned is computed on the basis of 27,391,134 shares of Altiris common stock outstanding as of the Record Date. Shares of Altiris common stock that a person has the right to acquire within 60 days of the Record Date are deemed outstanding for purposes of computing the percentage ownership of the person holding such rights, but are not deemed outstanding for purposes of computing the percentage ownership of any other person, except with respect to the percentage ownership of all directors and executive officers as a group. The address for those persons for which an address is not otherwise provided is c/o Altiris, Inc., 588 West 400 South, Lindon, Utah 84042.

Beneficial Owner (Name and Address)	Amount and Nature of Beneficial Ownership(1)	Percentage of Common Stock Outstanding
5% Stockholders		
Entities affiliated with Technology Crossover Ventures(2) 528 Ramona Street Palo Alto, California 94301	4,578,816	16.72%
Entities affiliated with FMR Corp.(3) 82 Devonshire Street Boston, MA 02109	3,501,313	12.78%
Westcap Investors, LLC	1,811,499	6.61%

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11111 Santa Monica Blvd., Suite 820

Los Angeles, California 90025

Price, T. Rowe Associates, Inc.	1,701,000	6.21%
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100 East Pratt Street

Baltimore, Maryland 21202

TimesSquare Capital Management, Inc.(4)	1,484,600	5.42%
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Four Times Square, 25th Floor

New York, New York 10036

Directors and Named Executive Officers

Gregory S. Butterfield(5)	127,859	*
Stephen C. Erickson(6)	64,655	*
Dwain A. Kinghorn(7)	254,577	*
Poul E. Nielsen(8)	38,273	*
Michael R. Samuelian(9)	39,771	*
Gary B. Filler(10)	12,500	*
Jay C. Hoag(11)	4,645,136	16.92%
Michael J. Levinthal(12)	97,500	*
V. Eric Roach(13)	195,833	*
Mark E. Sunday(14)	12,500	*
All current directors and executive officers as a group (10 persons)	5,488,604	19.72%

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- * less than 1%
- (1) The information provided in this table is based on our records, information supplied to us by our executive officers, directors and principal stockholders and information contained in Schedules 13D and 13G filed with the Securities and Exchange Commission.
 - (2) Consists of 4,404,586 shares held by TCV IV, L.P., 164,241 shares held by TCV IV Strategic Partners, L.P. (which are collectively referred to as the TCV Funds), and 9,989 shares held by Technology Crossover Management IV, L.L.C., which is the General Partner of each of the TCV Funds. Jay C. Hoag, a director of Altiris, and Richard H. Kimball are the Managing Members of Technology Crossover Management IV, L.L.C. Mr. Hoag and Mr. Kimball each disclaim beneficial ownership of these shares, except as to his respective pecuniary interest therein.
 - (3) FMR Corp. is the parent corporation of a wholly owned subsidiary, Fidelity Management & Research Company or Fidelity. Fidelity is the investment advisor to various investment companies that are registered under Section 8 of the Investment Company Act of 1940 and hold shares of Altiris common stock. As investment advisor, Fidelity may be deemed to beneficially own 2,986,251 shares, where 2,326,683 shares of which are held by Fidelity Contrafund. Each of Edward C. Johnson 3d, Chairman and a holder of 12% of the outstanding voting stock of FMR Corp., and Abigail Johnson, a holder of 24.5% of the outstanding voting stock of FMR Corp., may be deemed to beneficially own the shares beneficially owned by FMR Corp.
 - (4) CIGNA Corporation is the ultimate parent company of TimesSquare Capital. CIGNA disclaims beneficial ownership of the shares except as to its pecuniary interest therein.
 - (5) Mr. Butterfield's shares include 125,625 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Butterfield.
 - (6) Mr. Erickson's shares include 63,125 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Erickson.
 - (7) Mr. Kinghorn's shares include 27,500 shares held by Computing Edge Corporation, or CEC, 179,280 shares held by Computing Edge Limited, or CEL, 2,200 shares held in Mr. Kinghorn's name and 42,313 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Kinghorn. Mr. Kinghorn is the Chief Executive Officer and holds all of the outstanding capital stock of CEC and he is a director of CEL. Mr. Kinghorn disclaims beneficial ownership as to CEL's shares, except as to his pecuniary interest therein.
 - (8) Mr. Nielsen's shares include 34,750 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Nielsen.
 - (9) Mr. Samuelian's shares include 8,763 shares held by Mr. Samuelian and Luann Samuelian as joint tenants, 13,924 shares held by the Samuelian 2002 Grantor Retained Annuity Trust, or the Samuelian Trust, and 17,084 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Samuelian. Mr. Samuelian disclaims beneficial ownership of the shares held by the Samuelian Trust except as to his pecuniary interest therein.
 - (10) Mr. Filler's shares include 12,500 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Filler.
 - (11) Mr. Hoag's shares include 4,404,586 shares held by TCV IV, L.P., 164,241 shares held by TCV IV Strategic Partners, L.P., 9,989 shares held by Technology Crossover Management IV, L.L.C., 3,820 shares held by the Hoag Family Trust U/A Dtd 8/2/94, (Hoag Trust), of which Mr. Hoag is a trustee, and 62,500 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Hoag. Mr. Hoag is a Managing Member of Technology Crossover Management IV, L.L.C., which is the General Partner of each of the TCV Funds. Mr. Hoag disclaims beneficial ownership of the shares held by the TCV Funds, Technology Crossover Management IV, L.L.C. and the Hoag Trust, except as to his respective pecuniary interest in each of those entities.
 - (12) Mr. Levinthal's shares include 85,000 shares held by a retirement trust for the benefit of Mr. Levinthal.
 - (13) Mr. Roach's shares include 133,333 shares held by The Roach Family Trust, for which he serves as trustee, and 62,500 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Roach.
 - (14) Mr. Sunday's shares include 12,500 shares issuable upon exercise of options exercisable within 60 days of the Record Date held by Mr. Sunday.

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SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires our officers and directors, and persons who own more than 10% of our common stock, to file reports of ownership and changes in ownership with the SEC and the National Association of Securities Dealers, Inc. Executive officers, directors and greater than 10% stockholders are required by the SEC regulations to furnish us with c